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ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS FARMER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 48A02-0710-CR-843
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0704-FB-83

April 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Thomas Farmer appeals his eight-year aggregate sentence for battery resulting in serious bodily injury as a Class C felony and criminal gang activity, a Class D felony. Specifically, he contends that the trial court erred in failing to find his guilty plea as a significant mitigating factor and that his sentence is inappropriate. Because the trial court found Farmer's guilty plea to be a mitigator and Farmer can not now challenge the weight of this mitigator, his challenge to this mitigator fails. In addition, in light of the brutal nature of the gang beating of the victim in this case and the fact that Farmer's criminal history appears to be quickly escalating in severity, he has failed to persuade us that his eight-year aggregate sentence is inappropriate. We therefore affirm.

Facts and Procedural History

On April 9, 2007, the State charged Farmer with aggravated battery, a Class B felony, and criminal gang activity, a Class D felony. In July 2007, Farmer pled guilty to battery resulting in serious bodily injury as a Class C felony and criminal gang activity, a Class D felony. The plea agreement provided that Farmer's sentence "shall be open to the Court with the counts to run concurrently." Appellant's App. p. 11. According to the factual basis presented by the State:

[O]n or about August 13, 2006 in the Madison County, State of Indiana, the defendant in this case, Thomas J. Farmer, did knowingly touch another person in a rude, insolent or angry manner, that being a Douglas L. Wright, in which touching resulted in serious bodily injury to Mr. Wright. And that further on that date that he did also knowingly and intentionally actively participate in criminal gang activity specifically being there on that date it was reported that Douglas Wright had been the subject of a beating by several individuals, including by Mr. Farmer and that when this was reported, the police did investigate and determined that Mr. Wright had been taken into a secluded area on that date by a number of individuals who

were at that time operating as a gang, as part of a gang activity also known as the ES Crips. That on that date that several individuals, including Mr. Farmer, did knowingly touch Mr. Wright with various items, objects, which did result in serious injuries to him, those including having a broken left hand, broken right arm, various stitches in places and bruises around his hand and also complaints of pain in numerous parts of his body. . . . Mr. Farmer later was questioned by the police and also acknowledged involvement in the incident as well

Tr. p. 7-9. The trial court accepted the plea agreement and set the matter for sentencing. At the August 2007 sentencing hearing, the trial court identified as aggravators that Farmer was on probation at the time he committed these offenses and his prior criminal history. As for mitigators, the trial court stated, “The fact that he plead[ed] guilty may be [a] mitigating circumstance, but it’s de minimus, especially when the evidence is overwhelming.” *Id.* at 21. The trial court also found Farmer’s remorse as a “de minimus” mitigator. *Id.* Finding that the aggravators outweighed the mitigators, the trial court sentenced Farmer to an above-advisory term of eight years for battery resulting in serious bodily injury and an above-advisory term of three years for criminal gang activity, with the sentences to be served concurrently. Farmer now appeals his sentence.

Discussion and Decision

Farmer raises two issues on appeal. First, he contends that the trial court erred in failing to find his guilty plea as a significant mitigator. Second, he contends that his above-advisory sentence is inappropriate.

I. Mitigator

Farmer contends that the trial court erred in failing to find his guilty plea as a significant mitigator. As detailed above, the trial court identified Farmer’s guilty plea as a mitigator but concluded that it was *de minimis* in light of the substantial evidence of his

guilt. As such, Farmer's argument that the trial court should have found his guilty plea as a significant mitigator is really a challenge to the mitigator's weight. Although sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion, *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007), our Supreme Court clarified in *Anglemyer* that a trial court can not now be said to have abused its discretion in failing to properly weigh aggravators and mitigators. *Id.* at 491. Accordingly, Farmer's challenge to this mitigator fails.¹

II. Inappropriate Sentence

Farmer contends that his eight-year aggregate sentence for battery resulting in serious bodily injury as a Class C felony and criminal gang activity, a Class D felony, is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

¹ Farmer also contends that the trial court erred in failing to consider his limited criminal history as a mitigator, but he has waived this argument for failing to make a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a).

As for the nature of the offenses, according to Farmer's version of the events as contained in the PSI, Farmer, along with his fellow gang members, transported Wright to the woods, "jumped him," and "beat the daylights out of him." Appellant's App. p. 18.² Wright suffered a broken hand, a broken arm, and bruises and received stitches. As for his character, Farmer, who was twenty-one years old at the time of sentencing in this case, has a criminal history that appears to be quickly escalating in severity. On August 4, 2006, Farmer was convicted of two counts of misdemeanor criminal conversion. On August 13, 2006—a little over one week later—he committed the instant felony offenses. Then, on August 25, 2006, Farmer committed another offense, Class D felony receiving stolen property, and was later convicted. Indeed, Farmer was on probation for the criminal conversion convictions when he committed all of these later offenses. Thus, it appears that the police power of this state has had no deterrent effect upon him. Given the brutal nature of these offenses and his character, Farmer has failed to persuade us that his eight-year aggregate sentence is inappropriate.

² We note that Farmer included a copy of the presentence investigation report on white paper in his appendix. *See* Appellant's App. p. 14-22. We remind Farmer that Indiana Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with HTrial Rule 5(G)H." Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the presentence investigation report printed on white paper in his appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

- (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."

Affirmed.

SHARPNACK, J., and BARNES, J., concur.